

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 04-11492-WGY

MARIO LACY,  
Plaintiff,

v.

WILLIAM J. FEENEY, Jr.,  
KENNETH HEARNS, JEAN  
MOSES ACLOQUE AND THE  
CITY OF BOSTON  
Defendants.

**MOTION IN LIMINE TO PRECLUDE REFERENCE TO BPD RULES**

Now come the Defendants, William Feeney, Kenneth Hearn and Jean Moses Acloque and move *in limine* to preclude the Plaintiff, Mario Lacy, from referencing or asking witnesses questions about Boston Police Department Rules and Regulations ("BPD Rules"). Any such reference to these rules is irrelevant to the issues of this case and could mislead and confuse the jury. Accordingly, the Defendants request a curative instruction regarding the numerous questions the Plaintiff has already asked about the BPD Rules.

**1. Reference to BPD Rules is precluded by Fed.R.Evid. 402**

The BPD Rules are irrelevant to this case. See Fed.R.Evid. 402. Here, the issues to be decided by the jury are whether the Defendants performed a strip search and a body cavity search of the Plaintiff in violation of the United States Constitution.

Thus, the BPD Rules are irrelevant because a violation of BPD Rules is not *per se* a violation of the United States Constitution. In fact, any alleged violation of BPD Rules does not, in any way, indicate a violation of the Constitution. Furthermore, the BPD Rules are irrelevant because the Plaintiff's claim of municipal liability against the City of Boston has been dismissed.

**2. Reference to BPD Rules is precluded by Fed.R.Evid. 403**

Even if the BPD Rules are relevant, which the Defendants deny, any slight probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury. See Fed.R.Evid. 403. There is no connection between an alleged violation of the Constitution and an alleged violation of the BPD Rules. Accordingly, in this case, any probative value regarding the violation of BPD Rules would be slight. However, there is an extreme danger that such questions and testimony regarding alleged violations of BPD Rules could confuse the issues of the case and misleading the jury into the conclusion that the Constitution was violated. Furthermore, such references regarding the alleged violation of BPD Rules is unfairly prejudicial and could lead to jurors to impermissibly "punish" the officers.

**3. Curative instruction regarding references to BPD Rules is necessary**

Because of the danger of the irrelevant BPD Rules confusing and misleading the jury, the Defendants request that the Court provide a curative instruction explaining that the BPD Rules are not the same as the United States Constitution and that a violation of BPD Rules does not, in any way, indicate a violation of the Constitution.

Respectfully submitted,

DEFENDANTS, WILLIAM FEENEY,  
KENNETH HEARNS AND  
JEAN MOSES ACLOQUE  
William F. Sinnott  
Corporation Counsel

By their attorneys:

/s/ Karen A. Glasgow

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